

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

DONALD DUNNE and LORI	:	CASE NO.
ESHENAUR, as Trustees of the	:	
SHEET METAL WORKERS	:	
LOCAL 44 RETIREMENT	:	<i>Electronically Filed</i>
INCOME PLAN, SHEET METAL	:	
WORKERS LOCAL 44 ANNUITY	:	
FUND, SHEET METAL WORKERS	:	
LOCAL 44 WELFARE FUND and	:	
SHEET METAL INDUSTRY	:	
EDUCATION FUND,	:	
Plaintiffs	:	
v.	:	
ENVIRONMENTAL	:	
CONSTRUCTION SERVICES, INC.	:	
Building M-1 Navy Yard	:	
4623 South Broad Street	:	
Philadelphia, PA 19112-1202	:	
Defendant	:	

COMPLAINT

1. This Court has jurisdiction over the subject matter of this action under 29 U.S.C. §§1132 and 1145, 29 U.S.C. §185(a), and/or 28 U.S.C. §1331. The claims asserted herein are all made under federal statutes or federal common law, but the supplemental jurisdiction of the Court under 28 U.S.C. §1367(a) also extends to any claims that are found to lie under state law.

2. Venue lies in this District under 29 U.S.C. §1132(e)(2), 29 U.S.C. §185(a) and/or 28 U.S.C. §1391(b).

3. Plaintiffs Donald Dunne and Lori Eshenaur are Trustees of the Sheet Metal Workers Local 44 Retirement Income Plan (the “Pension Fund”) Sheet Metal Workers Local 44 Annuity Fund (the “Annuity Fund”), Sheet Metal Workers Local 44 Welfare Fund (the “Welfare Fund”) and Sheet Metal Industry Education Fund (the “Education Fund”), employee benefit plans within the meaning of Section 3(2) of ERISA. (The Pension Fund, Annuity Fund, Welfare Fund and Education Fund are hereinafter collectively referred to as “the Funds.”)

4. Said Funds are each “multi-employer plans” within the meaning of Section 3(37) of ERISA, 29 U.S.C. §1002(37). Said Funds have been established and are maintained pursuant to a collective bargaining agreement between an employee organization and more than one employer, and pursuant to a collective bargaining agreement (hereinafter “Agreement”) between Local Union No. 44 of the Sheet Metal Workers’ International Association and the Sheet Metal Contractors Association of Northeastern Pennsylvania, Inc., whose members employ members of said Union and other signatory employers, and are required to be maintained and administered in accordance with the provisions of the Labor Management Relations Act of 1947, 29 U.S.C. §141, et. seq.

5. The Funds are administered in Wilkes-Barre, Pennsylvania, and have their principal place of business at 248 Parrish Street, Wilkes-Barre, Pennsylvania

18702-4667. Venue is conferred on this Court pursuant to Section 502(e)(2) of ERISA, 29 U.S.C. §1132(e)(2).

6. Plaintiffs Donald Dunne and Lori Eshenaur (collectively “the Trustees” or “Plaintiffs”), are Trustees of the Funds, and are fiduciaries within the meaning of Section 3(21) of ERISA.

7. Defendant company, Environmental Construction Services, Inc., is an “Employer” within the meaning of Section 3(5) of ERISA, 29 U.S.C. §1002(5). The Defendant does business with the Funds that is sufficient to create personal jurisdiction over the Defendant in this District, and a substantial part of the events or omissions giving rise to the claims herein occurred from transactions with the Funds’ office in this District.

8. Local Union No. 44, International Association of Sheet Metal, Air, Rail and Transportation Workers (the “Union”), is an “employee organization” within the meaning of Section 3(4) of ERISA, 29 U.S.C. §1002(4).

9. At all times relevant to this action, the Defendant adopted and agreed to be bound by the terms and conditions of the Agreement, as evidenced by its signing a Recognition/Joinder.

10. The Agreement incorporates by reference the Funds' Amended and Restated Agreements and Declarations of Trust (hereinafter the "Trust Agreements").

11. Under the Agreement, Trust Agreements, plan documents of the Funds and/or other documents, the Company agreed:

a. To make full and timely payment on a monthly basis, on or before the 20th day of each month, to the Funds as required by the Trust Agreements and plan documents;

b. To file monthly remittance reports with the Funds detailing all employees or work for which contributions were required under the Agreement;

c. To pay interest at the rate of One and One-half (1.5%) Percent of the delinquent amount due the Funds per month;

d. To pay liquidated damages in the amount of Five (5%) Percent of the delinquent amount due the Funds; and

e. To pay all costs of litigation, including attorneys' fees, expended by the Funds to collect any amounts due as a consequence of the Company's failure to comply with its contractual and statutory obligations described in Subparagraphs (a) and (b), above;

f. To produce, upon request by the Funds, all books and records deemed pertinent and necessary by the Trustees to conduct an audit of the Company's records concerning its obligations to the Funds and to determine the correctness of the Company's contributions to the Funds; and

g. To pay all costs of the audit of the Company's records concerning its obligations to the Funds and to determine the correctness of the Company's contributions to the Funds.

COUNT I – CONTRIBUTIONS UNDER ERISA

Donald Dunne and Lori Eshenaur, as Trustees of the Sheet Metal Workers Local 44 Retirement Income Plan, Sheet Metal Workers Local 44 Annuity Fund, Sheet Metal Workers Local 44 Welfare Fund, and Sheet Metal Industry Education Fund v. Environmental Construction Services, Inc.

12. The allegations of Paragraphs 1 through 11 above are incorporated by reference as if fully restated.

13. The Funds' auditor, Calibre CPA Group, PLLC ("Calibre"), audited the books and records of the Company covering the period of November, 2013 through September, 2017.

14. Based on the books and records provided by the Company to Calibre, Calibre determined that the Company has failed to pay all amounts due under the Agreement, Trust Agreements and plan documents for the period of November,

2013 through September, 2017, in at least the sum of \$21,753.10, in violation of 29 U.S.C. §1145.

15. Pursuant to the provisions of the Agreement, Trust Agreements and plan documents, liquidated damages and interest in the amount of \$13,385.10 are due from the Company on account of the delinquent contributions relating to the audit for the period of November, 2013 through September, 2017.

16. The Funds are adversely affected and damaged by the Company's violation of 29 U.S.C. §1145.

WHEREFORE, Plaintiffs demand judgment against the Company as follows:

- a. For contributions due to the Funds for the months of November, 2013 through September, 2017 in at least the sum of \$21,753.10;
- b. For liquidated damages and interest due in the amount of \$13,385.10 on account of the untimely payment of contributions for the months of November, 2013 through September, 2017, plus any additional interest due since the filing of this suit;
- c. For costs incurred in this action or the collection or enforcement of any judgment as provided under the Trust Agreements, plan docu-

ments of the Funds and 29 U.S.C. §1132(g)(2), including filing fees in the amount of \$400.00, and service fees in the amount of \$137.50; and

- d. For reasonable attorneys' fees incurred in this action; and
- e. For such other legal or equitable relief as the Court deems appropriate.

COUNT II – CONTRIBUTIONS UNDER COLLECTIVE BARGAINING AGREEMENTS

Donald Dunne and Lori Eshenaur, as Trustees of the Sheet Metal
Workers Local 44 Retirement Income Plan, Sheet Metal Workers
Local 44 Annuity Fund, Sheet Metal Workers Local 44 Welfare Fund,
and Sheet Metal Industry Education Fund v. Environmental
Construction Services, Inc.

17. The allegations of Paragraphs 1 through 16 above are incorporated by reference as if fully restated.

18. The Funds' auditor, Calibre CPA Group, PLLC, audited the books and records of the Company covering the period of November, 2013 through September, 2017.

19. The Company has not paid the Funds as required by the Agreement and other documents incorporated by the Agreement, such as the Trust Agreements or plan documents of the Funds.

20. Based on the books and records provided by the Company to Calibre, Calibre determined that the Company has failed to pay all amounts due under the

Agreement, Trust Agreements and plan documents for the period of November, 2013 through September, 2017, in at least the sum of \$21,753.10.

21. Pursuant to the provisions of the Agreement, Trust Agreements and plan documents, liquidated damages and interest in the amount of \$13,385.10 are due from the Company on account of the delinquent contributions relating to the audit for the period of November, 2013 through September, 2017.

22. Plaintiffs have been damaged by the Company as a proximate result of the Company's breach of the Agreement and/or its incorporated documents.

WHEREFORE, Plaintiffs demand judgment against the Company as follows:

a. For contributions due to Plaintiffs, for the benefit of the Funds, for the months of November, 2013 through September, 2017 in at least the sum of \$21,753.10;

b. For liquidated damages and interest due in the amount of \$13,385.10 on account of the untimely payment of contributions for the months of November, 2013 through September, 2017, plus any additional interest due since the filing of this suit;

c. For costs incurred in this action or the collection or enforcement of any judgment as provided under the Agreement and Trust Agree-

ments, including filing fees in the amount of \$400.00, and service fees in the amount of \$137.50;

- d. For reasonable attorneys' fees incurred in this action; and
- e. For such other legal or equitable relief as the Court deems appropriate.

Respectfully submitted,
CHARLES W. JOHNSTON, P.C.
101 Erford Road, Suite 302
Post Office Box 98
Camp Hill, Pennsylvania 17001-0098
Telephone: (717) 975-5500
Facsimile: (717) 975-5511

/s/ CHARLES W. JOHNSTON
Pa. I.D. No. 15621
e-mail: cjohnston@jadlegal.com

Attorneys for Plaintiffs

Dated: November 7, 2018